A BREEFE Diſcourſe, declaring and approuing the neceſſarie *and inuiolable maintenance* of the laudable Cuſtomes of London:

Namely, of that one, whereby a reaſonable partition of the goods of husbands among their wiues and children is prouided:

With an anſwer to ſuch obiections and pretenſed reaſons, as are by perſons vnaduiſed or euil perſuaded vſed againſt the ſame.

AT LONDON
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1584.

Iuris ciuilis de consuetudine Axiomata siue maxima.

Consuetudo vim habet rei Iudicatæ.

Consuetudo est optima legum interpres.

Conuentio & consuetudo vincunt legem.

Consuetudo firmata est vbi simili aliquando contradicto, Iudicio quid est obtentum seu Iudicatum.

Cæpta vsucapio vel præscriptio per defunctum, continuatur per hæredem, cum in omne ius defuncti succedat hæres.

Profunda requie humano generi prospexit vsucapio. Barto.

Vsucapio est quies periculi solicitudinisq; litium. Cicero.

A BREEFE discourſe declaring and approuing the neceſſarie and inuiolable maintenaunce of the lawdable Cuſtomes of London.

WE finde it neceſſarie in all common wealthes, for ſubiects to liue vnder the direction of Lawes, conſtitutions or cuſtoms publickly knowen and receiued, and not to depende only vpon the commandement and pleaſure of the gouernor, be the ſame neuer ſo iuſt or ſincere in life and conuerſation. For that the Law once enacted and eſtabliſhed, extendeth his execution towards al men alike without fauour or affection: whereas if the word of a Prince were a lawe, the ſame being a mortall man muſt needes bee poſſeſſed with thoſe paſſions, and inclinations of fauour or diſfauour ỹ other men be: and ſometimes decline from the conſtant & vnremoueable leuell of indifferencie, to

respect the man besides the matter, if not to regard the person more than the cause. Wherfore it was wel agræd by the wisest Philosophers and greatest politicks, that a dumme lawes direction is to be preferred before the sole disposition of any liuing Prince, both for the cause afore touched, and for other reasons which I will here omit. But to descend to the particularities of my intention, and to treate of the validitie and inuiolable obseruation of some laudable (I might terme them sacred) customes, being the principall ioyntes and verie sinowes of all good corporations and fellowships, and being also the mainteiners of a sacred vnitie and natural amitie betweene the husband and his wife, the parentes & their children, which (as Aristotle the wise Philosopher termeth it) is the beginning of a citie. For what is a citie but a manifold and ioynt societie consisting of many housholdes, and liuing vnder the same Lawes, freedomes and franchises? so I must nesdes confesse them to be the procurers & causes of sundry good

good effectes to the generall estate of the citie wherein they be obserued: as of the other side they may breede sundrie inconueniences in such a citie where the same are violated and broken with allowance and impunitie. I will therfore shortly shewe the nature of a Custome, and the difference which it holdeth from a publicke Lawe. And next I will declare how necessarie the same are to manage the gouernment and to entertain the prosperitie and traffique of this citie: and namely that one good custome which I entende to speake of. Lastly, I wil endeuour to aunswere those pretensed reasons, and couloura-ble obiections made against the precise maintenance and defence thereof.

First then I suppose that a Custome which iustly deserueth that name, is of no lesse reuerent regarde and authoritie than a written lawe, passed and allowed in Parliament: which notwithstanding I doe graunt that there are certaine differences betweene a lawe and a custome: for the Custome taketh his force by degrees of time, and consent

of a certaine people, or the better part thereof, but a lawe springeth vp in an instant, & receiueth life from him that is of soueraigne authoritie to cõmand. A Custome enlargeth it selfe by plausible entertainement, and acceptable circumstances of time & occasion, with generall liking and allowance, whereas a Law is commanded and published by power and receiued by dutifull constraint, and that often against the good will of them that are bounde by it, for which cause Chrysostome not improperly compared the Custom to a King, and the Lawe to a tyrant. Moreouer the Custome doeth neither promise a reward for obseruation, nor inflict a punishment for violation therof: whereas the Lawe alwaies importeth either a consideration of gaine, or a terror of punishment or damage, if the same be not a Lawe of enlargement or permission that disanulleth the prohibitions of a former Lawe. Finally a Custome is applyed to the commoditie of some one prouince, circuite or citie, and grounded vpon a speciall reason of conueniencie

or

or cõmoditie, for those persons or place where it is obserued: whereas the Lawe hath a generall reason, extended to the whole Nation bound by the same, without priuate consideration of the due importances, of any peculiar place or people. Therefore it is well saide and put in vre by the common Lawyer, *Quod consuetudo ex rationabili causa profecta priuat communem legem.* That a Custome grounded vppon reasonable and honest consideration abridgeth or altereth the iudgement of the cõmon Law. So that in Customes the estate or condition of the people are to be respected, and such Customes as are consonant to reason, and most appliable to the estate and qualitie of such people, are to be allowed. For example the Custome of Borough-english, yet in force in sundrie places of Englande, whereby the younger sonne is to inherite his fathers lande, hath taken strength by this reason, that the father may (if he be not careles and secure to doe his children good) traine vp his elder sonnes in some good trade or occu-

See 34. H. 8. B. custome, 59. A mã may not prescribe or plead a custome per totam angliam, for that is cõmon law & no custome, otherwise if the custome had beene pleaded to be in such a citie or countie as Gauelkind Gloc. Fee and such like.

Burchenglish.

pation by which they may bee able to get their owne liuing: whereas the youngest, by the impotency and tendernesse of his yeares, may be perchaunce vnapt and vnable for such instruction. And so the Custome commendable that prouideth for the relieue of the young and impotent. Also by an olde custome of this lande, in sundrie boroughes and townes, landes were deuisable by wil, though the Lawes of Englande pronounced such deuises to be voide, and the reason was, for that inhabitants of Boroughes or Cities, whose traffique and trade resteth much vppon mutuall trust & credite, are oftentimes indebted at the time of their death. Wherefore it was thought meete, that they might deuise their lande for the due satisfaction of their creditors, which to do, they were enabled by the Custome. In Kent and other places of this lande the Custome of Gauelkind is maintained, which importeth an equall diuisiõ of the enheritance to be made among all the brethren: a Custome partlie grounded vpõ a natural consideration,

But see now the statute of 32 H 8. ca 2 and 34. H. 8. c. 5. of Explanation.

for

for that al the ſonnes holde the like obligation of nature & deſert with their parentes, in the which they haue an equall intereſt: and alſo ſuffered to take place in Kent and other places of this lande in thoſe daies moſt inclinable to rebellion, to the intent to enfœble their forces, and to bring their great houſes and families to impuiſſance and decay, thereby to diſable and diſcourage them from ſuch vnlawefull and violent attemptes.

And to come néerer to the matter, this famous and renowned citie of London hath many laudable and auncient Cuſtomes: which though they derogate and differ much from the rules of the common Lawe, yet haue they béene not onely approued by inuiolate experience of ſundrie ages, but alſo haue béene of olde ratified and confirmed by ſundry actes of Parliament, and charters of Princes, and namely by the ſtatute of Magna Charta, by theſe wordes following, *Quod ciuitas London habeat omnes libertates ſuas antiquas & conſuetudines quas habere conſueuit,* Magna charta cap. 9.

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which is, That the citie of Londō haue all their auncient liberties & customes which they haue vsed to haue. The words folowing for other cities, &c. be, *Quod habeant omnes libertates & liberas consuetudines suas*, which signifieth, that they shall still retaine their liberties & free customes, that is to say, their frēedomes & immunities, as to be discharged of tolle, pontage, and such like: Whereas the Citie of London hath prouision made by that estatute, for all vsages and customes whatsoeuer. Verily as ỹ citie of London beareth odds, and prerogatiue ouer other cities in England, being the Metropolis or mother Citie thereof, so are the inhabitantes of it no lesse necessarie than profitable members of the cōmon wealth, in transporting our commodities into other lands, and enriching vs with the benefits and fruits of other countries. The citie of Rome, and Citizens of the same had that prerogatiue as in other thinges so also in their executions for causes capital, that they should not be crucified, being a death of great

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torment and infamie, but only beheaded. The benefit of which Custome S. Paule claymed and obteyned in the time of Nero: pretending that he was a citizen of Rome. The saide Citizens also by the dignitie and reputation of their citie were not for any transgression or offence to be fettered, whipped, or scourged, which priuiledge likewise the saide S. Paule toke hould of, who being oppressed by the calumnious accusations and outcries of the Iewes, was by commandement of Claudius Lisias the captaine to be examined by torture of whippes, what was the cause of that generall murmure and exclamation of the people against him: yet S. Paule by alleadging that he was a free man of Rome, not onely deliuered himselfe frō the iniurie and rage of the people, but also made the captaine much afraide of question or punishment for the indignitie offered vnto him, so great was the maiestie of that Citie, and so reuerent the reputation of all such as were accounted members thereof. Athenæus termed Rome in those daies very fitly, Actes. 22.

Epitome

Epitome totius orbis, an abridgement of the whole worlde, for the continuall concourse and resort of all nations thither. We may derive thence an argument for our purpose, that London beeing worthie that title, *Epitome totius Angliæ* in respect of the necessarie repaire & frequent assemblie of al estates therein, whether it be for Justice by the Lawes of this land, which are here administred, or by trade of marchandise, which is here so great that it may be termed *totius occidentis emporiũ*: and chieflie because of the favorable and often soiorne of our most roiall and gracious soueraigne, whose maiesties chamber this is as it alwaies hath beene of her most noble progenitors: the same is no lesse worthy of sundry preheminences which by Custome and Charter it enioyeth aboue other Cities of this lande.

We finde in our Lawe bookes that the scholers of Oxford claymed a priuiledge by custome to haue preferment of any house or lodging that was to be lette in the citie of Oxforde, & the same was

40.E.3.fo.17. Vide Brooke, Prescr.8.

was allowed in the common place in Weſtminſter, where Iuſtice Finchden a man of great reckoning at that time ſaide, that it is reaſon that they which are principal inſtruments of great good in the common wealth, ſhould haue beneficiall cuſtomes for the maintenance of their ſocieties: the like reaſon (ſaith he) ſerueth for the merchantes of the ſtaple in Weſtminſter, and alſo for the Iuſtices of Aſſiſes, or Iuſtices in eyre, to haue the like prerogatiue. Alſo it is not vnfitte to remember, that the barons of the lande haue diuers prerogatiues aboue other ſubiectes, that is, they ſhall not bee ſworne when they paſſe vppon their Peeres, and if they bring an appeale, the defendant ſhall not wage battaile againſt them, and they are exempted out of all returnes in Iuries, and ſhall not be ſworne in Leetes, and all in reſpect of their dignitie and for the neceſſarie vſe of them in gouernement of the common wealth. So that perſons of needefull employment in the eſtate, haue alwaies beene fauoured in all their honeſt Cuſtomes

or prescriptions, and especially the Citizens of London, and the rather for the great presumption and opinion conceiued of their experience, who being trayned by harde education, in great vse of seruice and affaires: and also by their trauaile and traffique beyonde the seas, by continuall negotiation with other Nations must needes (by al reasonable likelihoode) procure vnto themselues great iudgement and sufficiency, to manage a politicke regiment in their citie, according vnto that verse of the Poet Homer in the beginning of his treatise of wise Vlisses his aduentures remembring his trauaile into sundrie Nations and Cities.

Dic mihi musa virum captæ post tempora Troiæ,
Qui mores hominum multorum vidit & vrbes.

The sense whereof may be wel expressed in English verse without rime thus:

All trauailers do gladly report great praise of Vlisses:
For that he knewe manie mens maners,

maners, and sawe manie cities.

Which opinion of their politicie and experience conceiued and approued by the noble Princes of this lande, in all ages doeth euidently appeare by the manner of their gouernment, whereat strangers do no lesse enuie than admire seeing so populous a citie, conteyning by true estimation more then 500 thousandes of all sortes of inhabitants managed not by cruell viceroyes, as is Naples or Millaine, neither by proude Podestà, as be most cities in Italie, or insolent Lieuetenantes or presidentes, as are sundry Cities in France, (whose presidents are noble men or captaines, hauing their persons enuironed with a guarde of souldiers, and holding their cities possessed with a garrison aswell in the quietest calme of peace as in the hoatest combustion of warre:) but by a man of trade or a meere marchant, who notwithstanding, during the time of his magistracie, carieth himselfe with that honorable magnificence in his port, and ensignes of estate, that the Consuls, Tribuns or pretors of Rome, namely,

(namely, when as the same was reduced to a monarchie) much lesse the Podestà of any citie in Italie neuer bare the like representation of dignitie, and that not onely in peaceable seasons but in time of greatest warre: for such credite the Princes of this lande haue still reposed in their fidelitie and wise direction, that we haue fewe examples in any chronicle of any noble man or other appointed to assist the L. Maior in his gouernment, much lesse to bee sole ruler or lieutenant for the time, were the state neuer so troublesome, and the affaires of neuer so great consequence and importance.

And to adde a litle more in proofe of the singular good conceipt had of their seruice to the common wealth, and that the same hath in al ages from the conquest giuen them prerogatiue aboue other cities of this lande, wee reade in
7.H.6.32. the vij yeare of Henrie the vi, that in a *natiuo habendo* brought by the Lorde to recouer his villen, it was adiudged a good returne made by the Shiriffe of London, that such was the Custome of

London,

London, that a villen hauing remained there the ſpace of one whole yeare and a day, could not be fetched or remoued out thence. For ſo great is the prerogatiue of that place, that it giueth protection to the villen or bondman againſt his lord while the ſaide bondman ſhall be reſiant there. Likewiſe it was taken for a good cuſtome in the citie of London, that no attaint ſhould be maintained for a ſuppoſed falſe verdit giuen in that citie. In the which caſe the Shiriffe of London made returne vpon a writ of attaint ſued againſt a Londoner, that ſuch was and had been allwayes the cuſtome of the citie, that no attaint ſhould be allowed againſt any commoner or other citizen of the ſame, for which cauſe he might not *ſaluis libertatibus* without impeachmẽt of their liberties, ſerue or execute the writ. Then was there a writ directed out of the Chauncerie to the Juſtices of the Kings bench with expreſſe commaundement to allowe to the Maior, Shirifes and Citizens all their liberties, immunities & cuſtomes, and fur-

7.H.6.32. & the ſame caſe was adiudged in 2.E.3.

ther out of that writ was a *Ventre facias* directed to the Maior & Shiriffes, whereby was day giuen them to come and make declaration of their custom, at which day the parties plaintife and defendant being present, the Maior & Shiriffes had full allowance of their customs, the Shiriffes were holden excused for their returne, and the parties writ was abated, and himselfe punished by imprisonment for his vexation. I haue here at large remembred this case, to the ende it may appeare both what credit and opinion of conscience and trueth, the lawe ascribed to the citizens of London, and also how carefull and vigilant the Maior & Shiriffes haue alwayes beene to preserue & vphold their customs, although sithence that onely custome was for especiall causes abrogated by the statute of 11. H. 7. and an attaint giuen in London. Moreouer, we finde it recorded in M. 2. E. 3. that whereas a citizen of London brought an appeale of robberie, and the defendant would haue tryed his innocencie by battaile,

11. H. 7. ca. 21.

M. 2. E 3. cor. pl. 157.

as

as he may in semblable case against another man, Wilby then Justice answered him, that he was not to haue allowance of battaile in an appeale commenced by a citizen of London, for that by custom of their citie they were exempted from it. The like appeale was sued P. 20. E. 3. wherein the defendant made offer of the same triall. And although hee that sued the appeale woulde haue ioyned battaile without regarde of this fraunchise, the Lorde Maior with the rest of the corporation sued a writ out of the Chauncerie reciting their custome or franchise, and prayed allowance of it in disturbance of the battaile 20. E. 3. Coron. 125. P. 20. E. 3. cor. pl. 125.

If a free man or free woman of London be cõmitted to Ludgate, they are to be excused frõ the ignominie of Irons, if they can finde suerties to be true prisoners, & if the summe be not aboue an hundred pounds. Vpon the like reason is that custome established for the liberall and milde imprisonment of the citizens in Ludgate, whereby they

haue indulgence & fauour to go abroad into any place by baston as we terme it, vnder the garde and superintendencie of their kæper, with whome they must returne againe to the Prison at night, a custoue verily, though quarelled with by some, and supposed to be the hinderance and delay of Justice, & oftentimes a meane to defraud men of their true debtes and executions, yet the ground thereof being well examined, it wanteth not a sound maintenance in the course of reason (as I thinke.) For the prescription or custom is but a mitigation of the extremitie of their imprisonment, seruing rather for the expedition of their discharge & spædie satisfaction of their creditours, than for any other purpose: so that this scope and licence in proper construction and sense of lawe, cannot be termed an enlargement or libertie. For to remaine in the materiall prison in the night, and to go forth out of the same in the day, vnder the restraint & controll of a continuall kæper, is alwaies an imprisonment, though exercised

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with greater mildnesse & lenitie. And diuerse causes there are to warrant the same in London rather than in other places: the one is for that the citie of London standeth chiefely vpon the traffique and intercourse of merchants and the vse of buying & selling of their sundrie commodities, which is not alwayes performed by themselues but by their factours and seruants, and oftentimes one factor or agent serueth the turne of manie merchants, whereby he is pressed to sundrie and seuerall accountes. Wherefore to the ende the prisoners may enforme themselues vpon their mutuall reckonings, both what they owe and what is due vnto them, and also that vpon conference & account with their agents returning from other countreyes they may be made acquainted with the increase of their aduentures or commodities, it is necessarie they should haue places of meeting which will not be so conuenient in a close prison, the same being no place of assemblie or free accesse (especially it being no common dutie in the

Gaoler to permit any person to come among his prisoners for any such occasion) and if the Gaoler were bound to endure or suffer such common & voluntarie repaire vnto his prisoners, yet wil it be no fit place for marchants to treat & negotiate their causes which cannot be well determined without their bookes of accounts, and witnesses of their contracts, and oft must the same be decyded before the masters of their trades or companies. So ỳ this custome made in furtherance of mutuall accounts doth verie much enable the prisoner to procure his libertie and pay his det. Also if the prisoner be poore and of himself vnable to pay, this toleration of their going abroad with the keeper is a good meane for him to procure the almes and releefe of other charitable people, thereby the sooner to purchase his libertie. Whereby it appeareth what reckoning the lawe maketh of them, in consideration of their great hazard by sea (through danger of shipwracke or piracie) and adventure in strange countreys (by fall-

Vide 4. E 6. plo, com. 36.

hood

hood and negligence of factours) or by warres betweene Princes, the inconueniences and mischiefes whereof, are not so offensiue or preiudiciall to anie, as to merchants, whose condition as it may by a fortunate voiage be much enriched, and aduaunced: so may it by any of the mischaunces aforesaid, be so empaired & ouerthrowen, that it may turne himselfe, his wife, and familie to vtter calamitie and distresse. Therefore as the hope & comfort of the wife (hauing commonly no assurance of ioynture in the citie, nor expectation of dower as other women haue) and also of the children (being for the most part borne to no great patrimonie, other than that which their fathers shall by their vertuous industrie acquire) doth onely depend vpon the fortune of their husbands or fathers trauaile, it hath laudably and conscionably beene obserued for a custome, and is yet by the wiser and better sort religiously regarded that when any citizen of London dyeth, his wife shall haue the third parte of his goods, and the children another

third part, equally to be diuided among them, according to the proportion of his goods, and himselfe another third part to dispose by his last will & testament at his pleasure. A partition so reasonable and grounded vppon so good consideration, (the qualitie and estate of the Londoners considered,) that if it were not approued by custome, but to be proposed in the wisest and highest court of Parliament, whether it were fit to haue the force of a law, I thinke no man (vnlesse he were a Timon by nature, or a Diogenes by disposition) no man I say possessed with common humanitie would gainesay or impugne it. Doth not the common law now in force giue the husband presently by the intermariage al the goods and chattels of his wife, though the same be of the value of 10000. pounds, so that when shee is once his wife, the law disableth her to giue or dispose any thing that was hers before? And shall not the husband be bound by semblable obligation of reason to leaue his wife the third part of his goods, and if

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the lawe be in that respect defectiue (as what law in the world, except the law of God, is without his imperfections:) shall not the custome supply it in such sort that no barbarous and vncharitable or cautelous, and vnkind practises by déede of gift, or otherwise, shall disapoint or defraud the same: especially here in London, where the good estate of men, for the most part consisteth in mouables, by reason of their continuall trades and exchanges, so that their wiues cannot assure thẽselues of their dowrie cõmonly called thirds, as they might if their husbands were seased of lands in fée simple. Also the comfortable societie betwéene husband & wife, is of that pretious estimate and honorable reputation before God and man, that there may not possibly a more sacred and straite coniunction be imagined among the children of men. Charondas the Philosopher calleth them Homosipios, which signifieth, fedde with the selfe same foode. And Epimenides another Philosopher calleth them Homocapuos, which is as

much to say, as vsing the selfe same smoke, and the selfe same manger, & as it were drawing the selfe same breath. Finally, the scripture giueth expresse charge to eche man to tender his wife with extraordinarie good offices by saying, Thou shalt leaue thy father & mother, and cleaue to thy wife. If the force of custome did not enforce the matter, these onely considerations were sufficient to proue, that there should be nothing priuate, nothing peculiar, nothing proper, but euery thing in common, euery thing equally interested betweene the husbande and the wife. The like though not equall affection is commaunded by the Apostle to the Colloss. 3. by the fathers towards their children. You fathers be tender and louing vnto your children, and discourage them not.

Matth. cap. 19
Mark. cap. 10.
1. Cor. cap. 7.
Ephes. cap. 5.

But let vs see what account our common law hath made of the like customes, founded vppon the loue and affection betweene man and wife. It was vsed of auncient time in Gauelkind land, & hath receiued the allow-

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ance and iudgement of a good and lawfull custome, that if the husband be attainted and executed for a felonie by him committed, yet shall his wife for the solace of her losse and desolation haue her dowrie of his land, and also the heire shall inherite the same according to that olde saying: The father to the bough, & the sonne to the plough, although the common lawe by rigorous imputation to make men more fearefull to offende in crymes of such quality, extendeth ỹ punishmẽt though not to the persons of the wife & children, yet to their fortune so farre as it may turne to their vtter impouerishment and discomfort.

M.8.H.5. presc. 60.

8.E.2.Itin.can. prescript.50.

P.35.H.6.58.

In the citie of Yorke there is a custome, that the husband may enfeoffe his wife of such lande as he shall purchase, which though it be against the rule of the common lawe (which disableth the husband to conuey any lande to his wife) by feoffement or deede, yet by force of the custome it was adiudged to be lawfull and effectuall. Also the custome of manie places in England

12.H.3.pres. 6.1.

land is, that the wife shall enioy the whole land of her husband in name of her dowrie, as it appeareth by M. Litt. himselfe, and the husband cannot by any cautele or deuise defeate her therof. And in some other countreys they haue the moitie or tone part, and generally by the common lawe the thirde part. In Northwales the custome is so beneficiall for wiues, (that although they be sure of their thirds of such land as their husbands shall chaunce to be seased of at any time during the mariage) yet are they to haue the moitie or tone parte, not onely of his goods & moueables, but also of his leases, be the termes thereof neuer so long. Not manie yeres agoe the custome of Taundean was alleaged and allowed by the court of the Kings bench, that the husband or wife whether so euer of them did happen to ouerliue should haue the inheritance or fee simple land of the other by suruiuor, a custome verily neither contrary to reason nor repugnant to religion, as no well disposed or good husband can denie, when he entreth

Litt. ri. Dower

14. Eliz.

into

into conſideration of thoſe holie duties and good obſeruances that are cõmended and commaunded in holie ſcripture. If then theſe cuſtomes beare ſway in ſundrie places, and are publiquely approued by iudicial ſentences, what citizen wilbe ſo ſenſeleſſe, what Londoner ſo looſe, what merchant or other freeman ſo inconſiderate, and vnregardfull of his owne good eſtate, and ſo readie to defile his own neſt, as once to attempt or practiſe the violation or breach of ſo good a cuſtome? What is he who ſeeing the eſtate of London is preferred before other cities of the lande by the benefite and meanes of their moſt profitable cuſtomes, that will giue a daungerous example to abrogate the ſame and to call their vſages in queſtion? A cuſtome, if it haue beene once notoriouſly diſcontinued, or interrupted, loſeth the title and appellation of a cuſtome, and by inſtance giuen of the time when it was diſuſed lacketh a great part of his authoritie. Then vnnatural or at leaſtwiſe vnaduiſed is that citizen which to ſerue his priuate

Read the Epiſtle to the Epheſians, ca. 5.

priuate humor bringeth a generall custom either into question by his fraud, or by his example into contempt. Pernicious also is the president of one custome called in question to the ruine of the rest: Namely, when as the citie by their counsell in her maiesties courtes of Westminster, claiming the benefite of their customes, may be encountred & confronted, & with a counterplea giuen by themselues, that such of their owne Aldermen & commons haue by their deedes and deuises either disaffirmed or disanulled the same. A practise as of great condemnation in them that do it, so no doubt of great ouersight & incircumspection in them that suffer it.

See before in the case of robberie how carefull the citie was to auoide this danger and to preserue their custome, and also in ỹ case of the attaint before 7. H. 6. &c.

But somewhat to satisfie the idle cauils pretended to the contrarie saith some one, is not the generall lawe of England sufficient to manage the gouernement of London as wel as of all other subiectes, but that Londoners must haue priuate customes and vsages of their owne? This obiection made by the enuiers or enimies of the

wealth

wealth of London (howsoeuer they make shewe to the contrarie) rather deserueth a hisse than a replye, and is sufficiently confuted in the former discourse.

But it is further vrged by some hard husbands, my wife is frowarde & vndutifull, and hath not deserued it. Shée is a foole and cannot rule it. Shée will marrie againe, and enrich some other with the fruite of my trauaile. Wherefore I thinke it necessarie to abridge her of that liberalitie which the custome doth extende. Also my children be euill enclined, disobedient or vntractable, or some of them be. Wherfore I may with reason depriue them of the benefit of this custome. First to answere the vndutifulnes, I wish thée whosoeuer thou art to summon and conuent thy selfe to the tribunall seate of thy inwarde minde, as S. Augustine saieth, & to make conscience thy iudge, thy cogitations the witnesses, thy actions the accusers, thy memory the register or record to giue in euidence: and let it be discussed in all due circumstances,

Aug. in lib. confess.

ces, whether thou didst not likewise forget the offices of a good husband and defraud her of her duties, (as S. Paule sayeth) or prouoke her to impacience which the same Apostle forbiddeth in these wordes, You husbandes be louing to your wiues, and no way be bitter vnto them. Which also S. Peter remembreth in aduising husbandes to dwell with their wiues sincerely and according to knowledge in doing honor vnto them as to the weaker vessell. Let it I say bee examined in the consistorie of thy conscience whether thou either by thy fault wittingly, or negligently by thy default, or by thy vnkindnesse vnduly, hast caused her being the weaker vessell to be the more intollerable. If thou finde thy selfe condemned by thy conscience, let remorse be thy executioner, and amendment with kindnesse towardes thy wife be thy penance: but if thou finde thy selfe guiltie of no want of affection, loue or good cariage of thy selfe towardes her, so that her vndutifulnesse proceeded of her selfe: yet I pray thee remember

1. Corinth. ca. 7.

Coloss. ca. 3.

Peter. Epist. 1. ca. 1.

the

the benefits which God hath giuen thee by her meanes, whether they be giftes of fortune in bettering of thy estate, or eschewing of sinne, by her lawfull and comfortable companie, or the blessing of children a soueraigne good in this worlde, thy children being the monuments of thy life and being vpon earth, & the repayrers of thy decaie. And let these fauours and graces enioied by her company couer and counteruaile her other imperfections whatsoeuer. Folow therein the example of the wise Socrates, who being demanded how he could endure the continuall scoulding & veration of his wife Zantippe, likewise asked of the other why he suffered the cackling and vnpleasant noyse of hens and Turkeies in his house, because said the other they lay egges and breed chickens for me, and so said Socrates, Zantippe beareth me children, which good turne alone couereth and dispenseth with infinite defectes. Calicratides the Athenian being demaunded why he a man so nobly descended, but hauing matched with a base Thessalian wo-

man, yet by his last will bequethed vn-
to her all his substance, leauing his o-
ther friendes and kinsfolkes vnregar-
ded: because (saide he) she is my wife,
meaning that shee who was by his
iudgement and choice made worthie to
be his wife, should be vnworthie of no-
thing that was his. Which may also
satisfie that seconde point of supposed
folly in the wife, and want of discreti-
on to marshall so great a proportion of
wealth, as the custome will giue her.
Wherefore wouldest thou marie with
a fole, if thou thoughtest her vnwor-
thie of the rights of mariage? then see-
ing thy choice hath estopped thy testi-
monie of her folly, thy dutie towardes
thy wife shall binde thee to fauour and
conceale her weakenesse, and to per-
forme that which the custome pronoun-
ceth to be conuenient. It can not be e-
uill bestowed vpon her, whose right by
custome demaundeth it, and whose e-
state and imperfections haue néede of
it, whereas if the husband may be per-
mitted by this colour to defeate his
wife, many inconueniences and diso-
ders

ders might ensue.

First a generall Custome, which is as also a generall Lawe neuer prouided for such rare accidentes as seldome fall in experience, but for thinges that ordinarilie and cõmonly happen, should be broken, to the generall scandale and offensiue example of all through the inhabilitie of one, which were a thing vnreasonable. Likwise then might husbandes, (if that were admitted for a iust allegation) easilie deuise and publishe that or some other imperfection to be in their wiues, and thereby bereaue them of their right. No more then it is a iust counterplea or barre to a womans dower to alleadge that shee is a foole, no more is the imputation of such simplicitie honest and sufficient to exclude her from her portion. No it is wel said and maintained for a maxime in the common Lawe, Better it is to suffer a mischiefe than an inconuenience. Lesse harmeful and hatefull it is for a man to swallowe twentie of these light offences, and to disgest sundrie of these pretensed scruples, than by viola-

Leges se accõmodant ad ea quæ frequentius non quæ raro accidunt. Bartolus.

ting of a custome no lesse common than commendable to leaue to posteritie an odious memorie and obloquie of his name.

The last obiection against wiues is no lesse ridiculous than Tyrannicall, grounded vpon an vniust desire to restraine them from mariage. Mariage is an honorable ordinance of God, fit and necessarie for all persons disposed thereunto, to the auoyding of sinne, and maintenance of a comfortable and sociable christian life. To restraine or prohibit the same either in maides or widowes, (as S. Paule sayth) is the doctrine of diuels. And to indent or condition with any that he or she shall not marie, is a condition limited against lawe, and by the same pronounced vnlawfull and vnreasonable. Make it thine owne case, admitte thou diddest match with a welthie wife, whose furniture and riches hath increased thy estate, if God should call for her, wouldest thou in a kinde memoriall of the benefittes attained by her meanes, make thy selfe a votarie to liue vnma-

Tim.ep.1.ca.4

.43.E.3.6.

ried?

ried: Doe those which marie great heires being women, and after their wiues deathes enioy their whole inheritance by the curtesie of England, making their wiues heires to expect during their liues, take it for any matter of conscience or scruple to marie again: Unlesse it be in some place where the force of the custome and the benefit of the liuing ioyned together worke a contrarie resolution in some husbands: which Custome annexed to Gauelkind landes in Kent and other places is of this qualitie, that the husband shal after the decease of his wife be tenant by the curtesie of her lande as long as he remaineth vnmaried, whether he haue issue by her or not: but vpon his next mariage shall vtterly forgoe all his interest therein. A custome therefore the lesse vnreasonable because the restraint of mariage of the one side is counteruailed by the beneficiall fauour of the other side to haue the land by the curtesie without issue, and also for that he is to depriue the next heire of his wife, who perchance hath been maried with

16.E.3.aid 129
19.E.3.aid 144

him but fewe moneths or daies, of the profite and commoditie of the whole land during his life. But chiefly because it is a custome grounded & growen in continuance to such religious obseruation & regard, that it seemeth an offence of conscience to infringe it. But in our case sithens there is neither custom nor conscience to warrant thy will, why shouldest thou then seeme to quarell with the lawfull libertie of thy wife, if shee survive thee, shee being weake by kind and education, and thereby lesse able to direct her occasions, and gouerne her estate without a companion and coadiutor? no on Gods name referre her to her owne choyce & conscience therein, and make it no pretence and colour to abridge her of her right, because shee seemeth inclynable vnto that, which God hath ordained, & all men and women do embrace. As to the feare and suspition pretended, that another in matching with thy wife should be enriched by thy trauaile, what should moue thee to make that superstitious account of thy goods whe

thou

thou art gone? Were they any longer thine, than while thou hadſt life & licence to employ them? Thou muſt néedes knowe & acknowledge beſides thy daily experience, by the verie Etymologie and ſignification of the word, the true nature & qualitie of the thing. Theſe worldly goods are called temporall, becauſe they ſerue one but for a time, they are termed tranſitorie, for that their property is fleeting from one owner vnto an other, they are named moueable or currant, becauſe all their grace and credite is in running & remouing into diuers handes, according to that rude and olde (but yet true) latine ryme,

Omnia mundana per vices ſunt aliena,
Nunc mea nunc huius, poſt mortem ſunt alterius.

This worldly wealth each day (change doeth
Their owners as we ſee,
Nowe mine nowe his and after death
An others goods they be.

Then ſithence thy wealth hath wayted vpon thée all thy life long, wouldeſt thou require the ſame to reſt at thy de-

notion after thy death: If that seeme impertinent and vnprofitable vnto thee then relinquish this care and suffer the gods of this world to haue their naturall course and condition, which is to be still in exchange, passage, & posting from hande to hande, seruing all men, *vt peregrinationis viaticum*, That is, A pilgrimes charge or defrayment in his iourney, as S. Hierome termeth it. And addresse thy minde to the desire of such gods as are neither temporall, transitorie, currant nor moueable, but perpetuall, permanent, constant and not only immutable but inestimable.

Hieronymus in Epist.

But finally to satisfie the last obiection against thy children, I wish thee to looke backe vnto that I haue saide, that thou mayest not for a priuate iniurie or displeasure, seeme as much as lyeth in thee to supplant and abrogate a publicke custome, to the no lesse preiudize than offence of a great number that haue interest therein. In enriching thy sonne, thou dost discharge the duty of a naturall father towardes him, which if he prodigally or wickedly mis-

pend or abuſe, he carieth his owne condemnation and prouoketh a wilfull enemie to himſelfe. The good father mentioned of in the goſpel, who at the ſuite of his vndutifull & diſobedient ſonne, (that would néedes abandon the ſeruice and attendance on his father to runne the courſe of an extrauagant libertine with lewd companie) gaue him a great portion of his wealth, is not any way blamed by our Sauiour for that indulgence, but rather recommended to all poſteritie as a true paterne of a kinde father. S. Paule commaundeth the father to be well affected to his children, and no way to diſcourage them. What may bréede greater diſcouragement or diſcontentment in any childe than to ſée himſelf by the place of his birth and the good fortune of the citie intitled to the commoditie of a good cuſtome, and yet iniuriouſly by his owne father, (whoſe affectiõ ſhould be alwaies occupied and earneſt in procuring the good of his children) diſappointed of his hope and defrauded of his right. And as well as ſome hauing iuſt cauſe of diſ-

Luke. cap. 15.

Colloſſ. cap. 3

pleasure againe their sonne and childe, may in this vnlawfull and disorderly sort practise their reuenge, so may some other inconsiderate and wilfull father vpon a conceipt taken against a good sonne and of singular desert, for that he concurreth not with him in some humor or disposition, most wrongfully distresse and vndoe him by such a president. Thus the mischiefes obiected on the one side are light and of small moment, whereas the inconueniences apparant on the other side be manifolde and of dangerous consequence.

I will not vouchsafe to answere that vndiscrete Sarcasmus or bitter scoffe that some vse, We may play our wealth at dice without offence to the custome, wherefore shoulde wee not then dispose the same from our wife and children by our deedes of gift: This amounteth to as much as if a maried man would say, I may commit felonie or treason, and be attainted and hanged therefore, and then the law giueth my wife no dower, nor my heire no patrimony, then why should I not in

reason

reason vse my discretion with the land without incumbrance by the one, or injury to the other? Watch these two cases togither with iudgement, and thou shalt perceaue they haue a sensible concurrencie in their addresse and application to this purpose. It is wel said by the Poet,

Nil iuuat exemplum quod litem lite resolust.

The example of one wilfull or wicked act giueth no iust countenance or allowance to an other. Let so much saide to thy obiections take some place to alter thine humor, or at least be a preparatiue for thine owne reason in the feare of God to purge thée of the same.

But to conclude this short discourse with one consideration of great importante, I wish thee to consider, that this citie of London is and hath beene happily preserued in this flourishing prosperitie by the wise and politicke consent that all and alwaies the particulers haue had to increase the generall good estate thereof, thinking it their

dutie

dutie as they gotte and acquired their substance in this citie, so also to spend & defraie it in the same: insomuch that whatsoeuer falleth from the one commeth & groweth vnto an other, and by alteratiõ of priuate fortunes (as chaunces & changes of times do require from one citizen to another) the generall estate hath flourished and neuer wanted particular men of wealth & habilitie to sustaine the offices & functions of the citie. Upon which consideration by most laudable & auncient custome, the L. Maior and Senate of London haue bene and are intitled to the tuition & custody of young Orphanes and their goods, & likewise are made acquainted by ordinarie good meanes of inuentories taken & produced, what substance and wealth eth man dieth possessed of, to the intent that although that man which by his good trauails & trade hath growen to be rich among them, be departed hence, yet his goods may remaine as among his wife & children in vse and propertie, so to the generall strength of this city in account & reckoning.

ning. For we often ſée ỹ one rich mans wealth palleth to the increaſe of the good eſtate of an other citizen, either by mariage of the widowe, or of the Orphane: ſo that the citie though depriued of a member or inhabitant, yet is not deſtitute of ſuch as may diſcharge his employment and place. Whereas if this pernitious practiſe & vncharitable libertie might take rote by dédes of giftes & cautelous conueyance to ſtrangers, not only the wife & children may be diſtreſted, but alſo the ſtate of the citie much weakened, & in danger of a great diſreputation and decay, frō that that it hath béene and yet is. For if it be adiudged lawefull in one, of what degrée ſoeuer he be, it is neither impoſſible nor vnlikely that the ſame will be vſed by many, and conſequently may be practiſed by all: which if it befall, what will become of the happie condition of this Citie, it is not hard to coniecture. I meane not to extende my ſpeach to the preiudice of any true debtes that a man oweth without fraud or colluſion, ſéeing the cuſtom very prouidently careth

for

for the discharge thereof, but my purpose is to dissuade men frō euill example, from insolent violation of good customes, and from odious and vnseemely practises of deceipt & euill meaning towardes their wiues and children: Which perswasiō I would wish al professors of the Lawe seriouslie and carefully to vse and enforce to their clients, being citizens of London, as in good conscience and discretion they ought to doe.

An Apostrophe to the reader, and the motiue of this treatise.

Blame not my bold enterprise (gentle Reader) nor reproue my simple censure herein presented vnto thee, which might I knowe both for the matter and manner of it haue beene by any other, and perchaunce by my selfe more largely and effectually deliuered: if the opportunitie of my leasure might haue aunswered the qualitie of the argument which I had in hande. But fearing least I should with too long a discourse in so plaine a proposition breede more lothsomenesse than liking, I would not, for want of leasure I might not,

not, & if I had had time at will I minded not, ſeeing for any vrgent occaſion (the error being yet freſh, the practiſe rare and not growen to an enormitie, I needed not) but in a worde or two to make thee acquainted with the cauſe that moued me to addreſſe theſe fewe reaſons to thy gentle view. So it happened, that I being in company & conference with ſome perſons (though otherwiſe wiſe and well affected, yet in this matter ſtrangely conceipted) it chaunced that the lawefulneſſe and conuenience of this cuſtome came in queſtion and debate among vs, & was by ſome of them (being men for ſufficiencie, of great opinion, and for countenance and credite of good apparance and regarde in the citie) ſo preſſed with obiections, that the moſt part of thoſe which were preſent ſeemed to encline to that perſuaſion. Wherefore leaſt the authoritie of the men might the ſoner ſeduce the ſimple multitude vnto their error, & for that I thought it a charitable pollicie to preuent the peril in the prime, before it grewe to a feſtering ſore or incura-

ble

ble euill, according to the Poet Ouids aduise,

Principijs obsta sero medicina paratur,
Cum mala per longas inualuere moras.

Withstand at first the springing euill
With medicins fit therefore,
Too late it is to take the cure
Of old and festred sore.

I thought good to apply this simple resceipt of reason to the mindes of all such as shall chaunce to be distempered by these disuasions: hoping that they will yéelde me that friendly requitall of good construction, which my offered goodwill may séeme to deserue: and although I kéepe my selfe vnnamed, and vnknowen: it may please them to haue this opinion of me, no more fauourable than reasonable, that he which is well deuoted to the defence of good customs, is rather to be iustified in his good meaning, than condemned or held suspected of anie sinister conceipt.

FINIS.